EXPERT EXAMINATIONS AND TESTIMONY IN RAILWAY CASES.[1]

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THE expert witness should never forget that he is employed for the purpose of aiding in securing justice; and, furthermore he who interprets science honestly and truthfully will in the end receive the highest tributes of respect from his peers and best serve the interest of his cliental.

Truth is mighty and brings us nearer to our God, while, [2]"He who tells a lie is not sensible how great a task he undertakes; for he must be forced to invent twenty more to maintain that one."

The further consideration of the duty suggests the following query: what is justice? [3]"To give to every one his own." Furthermore, [4]"Justice discards party, friendship, kindred and is always therefore represented as blind."

The evil spirit—within the human breast—seems to whisper that the demands made on an expert witness are such, that it is impossible for him to maintain the high standard which we have prescribed. Let us briefly examine. Let us therefore take a retrospective view of this whole matter as presented in the light of history. The limits of this article preclude the possibility of detailing individual reminiscences illustrating the various steps by which men have risen from obscurity to the highest pinnacle of fame. However, I shall venture to boldly assert that this desirable point has been universally attained by a fearless and strict adherence to the principles of justice. Let us nevertheless examine further into this matter and investigate the following

[1]Read before the New York State Association of Railway Surgeons, November 14, 1892. [2]Pope. [3]Aristotle. [4]Addison.

question: What is required of the best educated surgeons before going on the stand as a medico-legal witness? He should make a special study in order to prepare himself for the work which is to be performed. Examine the patient minutely and diligently. Hours, and sometimes days, are required for the proper performance of this work. Weigh carefully the writings of the best authors, but don't accept blindly their statements. Accept only the truths and reject the errors. Banish from your mind mere theoretical views. The pathological lesions and carefully-made clinical observations furnish the only reliable basis on which to found a correct diagnosis or to apply rational treatment. The objective symptoms are *nature's positive and truthful declaration* of an injury done to some part of the organized body. In the majority of cases these symptoms point unerringly to the organ or organs which have received the injury.

The subjective symptoms are the patient's declaration made by either words or acts, and may be entirely true, or wholly false, or partly true and partly false, and should therefore be very carefully weighed before they are admitted as important testimony. Briefly stated, objective symptoms are those morbid signs which cannot be either feigned or exaggerated by a litigant, while subjective symptoms can be feigned or exaggerated by the same. In exceptional cases there are pathognomonic symptoms which settle clearly the question of diagnosis. Thus in cases of concussion of the lungs hemorrhages from these organs with a well-marked area of dullness and an absence of respiratory murmur corresponding in locality with the above, points unerringly to the morbid condition when the hemorrhage follows immediately after the concussive accident. It is however true, that the lesions in the lungs may be either the principal injury or a mere complication of another which is more serious. In the majority of cases however, the diagnosis must be based on a certain group of symptoms rather than on pathognomonic signs.

I recently examined a case which illustrates this point and will therefore venture to mention the most important symptoms. The plaintiff was about fifty years old, born in Ireland, came to this country in 1859 and had been employed several years as a porter in a mercantile house prior to 1889. During the month of December of this year he alleges he was injured by being

struck on the back by bags of flour—weighing about one hundred and forty pounds each—the fall of which did not exceed five feet. The plaintiff's feet rested at the time of the accident on the ground while his hands were probably about one foot from the earth. He was at this moment shifting a barrel of flour. He denies all knowledge of the number of bags which fell on him, says, "I was unconscious," but in another portion of his examination reveals a full consciousness at the time, says, "I was pulled from under the bags by another workman. I remember that I walked to an office which was a few rods distant with assistance, seated myself in an arm-chair, was given some whisky, after which I was nauseated, think I vomited a little, an ambulance having been obtained I was sent home."

He details minutely all the occurrences of the day on which he was injured. Prior to the day of the accident he asserts he had been perfectly healthy with the exception of occasional attacks of intermittent fever. At the time of the examination he was in a plethoric condition, face seemed somewhat livid and dull. The body was everywhere covered with a superabundance of adipose, the muscles were soft and flaccid, but in connection with this condition it should be remembered that the plaintiff has performed no manual labor during the past two years and nine months. The objective symptoms were as follows: the whole surface of the body was cyanosed, covered with a profuse perspiration which continued to trickle down for an hour or more while the plaintiff was entirely disrobed and the temperature of the room was only seventy degrees F. The reflexes were completely absent. The temperature was normal. There was no atrophy, or more accurately stated, careful measurements failed to show any want of symmetry in the limbs or other parts. The following are the important subjective symptoms: complained of lameness in the whole of the back immediately after the accident the right ankle was sprained, the right leg is mentioned as a seat of pain, but soon after he adds, "both legs became painful"—loss of sexual power—headache, etc. There is not the slightest, indication of paraplegia or any other form of paralysis shown by the plaintiff's statements during the first few months after the receipt of the injury. The bowels and bladder continued to act normally. There is no complaint of numbness or pricking sensa-

tions, etc. The pain in the lower extremities having continued several months he was then attacked with pain in the upper extremities. He now complains of loss of power in the upper and lower limbs. The pulse is frequent and small. The physician in attendance immediately after the accident and under whose care the injured man remained for about three months, says, there was no inflammatory reaction following this injury, and the plaintiff's statements confirm the doctor in this. The plaintiff's appetite has remained continuously good. There is no evidence to show that he has ever suffered from venereal disease, but he admits that he commenced drinking whisky when so young that he does not remember when he commenced—has taken some stimulants every day, and has occasionally been drunk, but does not think he has ever suffered from delirium tremens. He says, "I have never been able to walk more than three miles at any time since I was injured," and when asked why he could not walk further—replied, "I was too weak." An examination of the urine shows that it is acid in reaction and perfectly normal in every respect. The tongue was slightly furred on the day of the examination, the pupils were normal and the patient walked with an awkward limping gait. I am fully satisfied that he has not been coached for this examination by an expert surgeon; but at the same time he exaggerates the injurious effects of the accident and attributes all the ills from which he has suffered since its occurrence to this source.

The opinion which I have expressed in the above is based in part on the statements made by the physician who attended him immediately after the receipt of the injury and for the next three months. This physician is an honorable and trustworthy member of our profession and informs me that he was dismissed from this case, because he refused to give to the plaintiff, at this early date, a certificate of total and permanent disability. The plaintiff then passed into the thralldom of quackery, where he remains at the present time. The claimant's presentation of his case is so defective that it is impossible for any surgeon to base a diagnosis on it, or even conjecture what his real condition is, or has been since the accident. It has been previously stated, that when the plaintiff was disrobed it was observed that every portion of his body was cyanosed while he was perspiring pro-

fusely. How are we to interpret these morbid signs? The cyanosed condition was unquestionably produced by a vaso-motor paresis and the complete abolition of the reflexes indicates muscular paresis, while the loss of sexual power may depend partially or wholly on the same morbid condition. It will be here observed that I accept the loss of sexual power as an existing factor in the case, and I am prompted to this action from the fact that such acceptance is in strict harmony with my examination.

The examination fully convinced me in regard to the existence of a multiple motor paresis, while there was no evidence of any sensory disturbance. We are now confronted with the important question, what is the malady from which the plaintiff is suffering? Does the disease take its origin in part or wholly from the accident which has been mentioned? This was apparently followed by no symptoms of paralysis or inflammation. My own experimental studies satisfy me that the force applied was entirely insufficient to produce traumatic lesions of the spinal membranes or cord. The plaintiff's own statements on this point do not warrant the conclusion that any such injury was received, or that even an injury was done to the peripheral nerves. All the statements made which bear on this case during the first three months immediately after the accident are essentially negative. I am therefore convinced that the case before us is one of *chronic alcoholic multiple neuritis*. The plaintiff says, "I have used stimulants daily from my boyhood to the day of the examination—having taken a drink of whisky this morning—and, furthermore have occasionally been intoxicated, but have never suffered from *delirium tremens*."

The outlines here supplied cannot fail to impress on the reader's mind the necessity of a most careful and scientific examination of these cases. It requires on the part of the surgeon scientific knowledge, dexterity, tact and patience. In the examination of these cases *nothing should be taken for granted which can be demonstrated by the most scientific manipulation*. A hasty conclusion, unless based on a pathognomonic sign, is a disgrace to the examining surgeon, and is frequently not only worthless, but highly expensive to the parties who have ordered the service. Here, as in all other cases, honesty is the best policy.

The surgeon having made a full and correct report of the case examined, it is then placed in the hands of your client's lawyer who will decide whether it is a case to be compromised or settled in the courts. In this connection the value of an honest and correct opinion from the surgical expert must become apparent to all. An incorrect opinion furnished by a surgical expert may lead to disastrous litigation or the payment of a large sum of money to secure a compromise even in cases where no disability has been caused by the accident. The possession of scientific knowledge must be regarded as a *sine qua non* for the work required to be performed by an expert. However, the critic will object to the above statement, and assert that it is too general to possess any scientific value in this connection. Therefore I must express myself more definitely on this point. The medico-legal expert *must be able to detect every objective sign—to trace the same to the pathological lesion on which it depends—to weigh correctly every subjective symptom—to discover at this point all efforts at malingering or exaggerating and then to group all signs or symptoms in such a manner as to form a perfect picture of the malady.* To accomplish this object requires dexterity and perseverence. Dexterity of hand enables the surgeon to make the physical examinations in such a manner as to reach the facts, while intellectual dexterity draws from the mouth of the speculative litigant a full statemeut of the case—but it rarely resembles the purity of a nugget of gold, when first obtained; but may be fitly compared to a poor ore, which contains a small amount of the precious metal and a large quantity of extraneous matter. The same power—intellectual dexterity—when skillfully employed will enable the surgeon to separate truth from falsehood. Dexterity can not be learned from books, but can only be acquired by patience and experience. The next in importance is time and perseverance. With time we bring the truth to light and detect the malady—verily it is the test of truth.

The following expresses the important lesson perseverance:

> "Stick to your aim; the mongrel's hold will slip,
> But only crow-bars loose the bull-dog's lip;
> Small as he looks, the jaw that never yields,
> Drags down the bellowing monarch of the fields."—O. W. HOLMES.

The following are the powers which every skillful surgeon must employ to solve the mysteries of obscure maladies, viz.: Scientific knowledge, dexterity, time and perseverance. Hurried examinations and hasty conclusions are always dangerous and commonly worthless. Many of the cases in which medical expert testimony is sought are naturally very obscure; and are likewise frequently severely complicated by litigation symptoms. How can the surgeon eliminate the extraneous matter and thus obtain possession of the facts? No perfect rule can be stated—since every case must be managed according to its peculiarities and surroundings. If any absolute rule ought to be followed, it should be the following:

Let the surgeon under no circumstances antagonize the person whom he is examining. The general observance of this rule is an absolute necessity. But should an exception ever arise be sure to postpone the asking of any question which might possibly give offence to the person being examined, or even his friends, until you have obtained all other information which may have a bearing on the case before you. Let the examination be systematized. Begin with a biographical sketch of the litigant, follow with a history of the accident, and finally, with a careful inspection and thorough examination of every part of the body. This biographical conversation—commencing with the name, nationality, occupation and age—commonly serves the purpose of introducing the surgeon to the party to be examined. This subject may be made very agreeable even to the ordinary litigant, and the surgeon may receive from him certain points which will aid in unravelling the case. Furthermore the litigant in this free and easy conversation frequently forgets to act the part of a deceiver, and he thus enables the surgeon to behold him in his true character. In this conversation the surgeon must take his part—may ask leading questions, etc., but he *must never fail to be a pleased and attentive listener*. Whenever a communication is made bearing especially on the case under consideration the surgeon should not fail to enter it in a note-book. Let me here reiterate what I have previously said, "Never offend or antagonize the party whom you are examining." Your object is to draw forth from this party a full and honest statement. An angry person under

these circumstances is much inclined to lie and greatly exaggerate, while he may either refuse to allow you to go on with the examination or so act as to prevent you from performing it satisfactorily. The introductory part having been well performed, let the surgeon then ask the litigant to give a full and careful statement of the accident. The description should be noted down in the words of the litigant. There ought not to be asked a single leading question, but should the party wander away from the subject, his attention may be cautiously directed by the surgeon to those points which have some bearing on the case. It is indispensable if the surgeon would obtain all the facts in the case to allow the litigant to go over the details of the case many times. While, at the same time, it will be found advantageous to require him to state the various incidents in the order of their occurrence. The advantages arising from this order of narration are too numerous to be fully enumerated here, but I will briefly say that the narrator finds it much easier to follow up a continuous chain of occurrences—the rehearsal of the last act narrated naturally suggests that immediately following, and so on to the end of the chapter. It is likewise much easier for the surgeon to follow up this unbroken chain of events and to record the same, than it would be if the history were given in a disconnected and haphazard manner. The surgeon ought to be especially careful to obtain a full description of the disability, including its degree, etc., as well as the symptoms which followed immediately after the occurrence of the alleged injury. For the accomplishment of this end the party being examined should state here, for instance, if he has asserted that he was thrown from his berth to the floor, the portion of the body which first came in contact with the floor or other portion of the car, how long did he remain in this position, did he arise without assistance, if assisted by whom, where did he go immediately after the accident? Did he have assistance, etc.? What symptoms did he complain of at this time? Let the surgeon now follow him with the same care during the next forty-eight hours, even for a longer period. The necessity for this procedure is based on the allegation that inflammatory and other morbid changes have arisen from concussive injuries which were not accompanied by morbid symptoms; while it is self-evident

that this statement is a mere hypothesis, which has been disproven by experimental observations and analagous reasoning, but, nevertheless it is worthy of further clinical study, owing to the high authority who gave birth to this theory.

Even if it be admitted that symptoms of degeneration of nerve tissue have manifested themselves six months after an accident, is it therefore logical to conclude that the accident is the cause of the degeneration? Mr. Erichsen, in the last addition of his work, says:[1] "But during the whole of the interval, whether it be of long or short duration, it will be observed that the sufferer's condition, mentally and bodily, has undergone a change. This is a point which I would particularly insist upon. He never completely gets over the effects of the accident. There may be improvement; there is not recovery. There is a continuous chain of broken or ill health, between the time of the occurrence of the accident and the development of the more serious symptoms. It is this that enables the surgeon to connect the two in the relation of cause and effect. This is not peculiar to railway injuries, but occurs in all cases of progressive paralysis after spinal concussion, and may be noted in the histories of many that have been given in these lectures."

That portion of this quotation to which I wish especially to direct attention reads as follows: "*There is a continuous chain of broken or ill health, between the time of the occurrence of the accident and the development of the more serious symptoms. It is this that enables the surgeon to connect the two in the relation of cause and effect.*" This statement *should never be forgotten* in our attempts to make a diagnosis in cases of concussion of the spinal cord or other injuries of the back which have been included in Mr. Erichsen's so-called "spinal concussion." This statement is in perfect harmony with the results which I obtained in my experiments on animals, so far as it goes, but it is likewise equally true, that in a large number of these cases, although the animal seemed to be very seriously injured immediately after the infliction of the traumatism, they entirely recovered within three to five days. There is another point in connection with these examinations which is certainly entitled to our careful considera-

[1] "On Concussion of the Spine." Longmans, Green & Co., London, 1882, page 158.

tion. It has sometimes been asserted that it is beneath the dignity of our profession to make any effort to detect malingering or exaggerations by observing the movements and general appearance of the party examined after he passed through this ordeal at the hands of the examining surgeon in his office. Here I *differ emphatically* with those who hold the above views, and earnestly declare that since a correct diagnosis is the only basis on which justice can be secured, it is therefore the plain duty of the surgeon to use every means which he possesses for the attainment of this end. He who neglects this on the plea that it is beneath his professional dignity disgraces science and either defeats or contributes to the defeat of justice. The malingerer comes into our office and, having been well coached for this work plays well his part in the drama, while in the surgeon's presence he is apparently the decrepit man; but a few hours later when seen on the street in the company of boon companions he has regained the sprightliness of youth, while his movements resemble those of the young spring-buck.

We have now sketched some of the important outlines to be followed in making a medico-legal examination, while it is thought that a competent examining surgeon will readily fill in the necessary means best suited to secure the object sought in any individual case.

The medico-legal examination is most frequently sought for the purpose of enabling an equitable compromise to be effected; but in other cases it is not demanded until the parties have joined issue in courts of justice. It matters not whether the examination is sought for the former or latter purpose; since it frequently happens that the efforts made to effect a compromise fail and the case is finally adjusted in the court. Consequently a complete written report should be made immediately after this examination and all the notes taken at this time should be carefully preserved. Furthermore, the chief object sought in all these cases is a correct diagnosis which must be sustained by a most thorough and scientific examination. It may be further added that the best coat-of-mail with which an expert witness can be provided, when he takes the witness-chair in a court-room, is a *thorough knowledge* of the subject on which he is to give testimony and a full determination to *adhere strictly to the*

truth. Thus armed he cannot fail to acquit himself creditably. Another point to be kept constantly in view is the fact, that he has no right to be swayed from the path of duty by sympathy or to bestow the benefits of his doubt on either of the contending parties. The expert witness ought at all times in the court-room to avoid, as far as possible, the use of technicalities, the only effect of which is to make the witness appear pedantic, while the court and jury will justly regard this course on the part of the witness as an attempt to hide his own ignorance. However, should it ever happen that a technicality has been employed by a witness, he should immediately explain the same, in language so simple that the most ignorant member of the jury can understand it. Let the witness in no case attempt to explain that which he does not understand, and do not be afraid to admit that many questions in science can be asked which the human mind cannot comprehend or fathom. The answers which are based entirely upon theoretical grounds are entitled to very little consideration ; and consequently ought to be commonly avoided in the court-room. This sort of testimony is usually brought forward by lawyers who are managing weak cases, and who thus seek to divert the attention of the jury from the facts of the case before them. The only theories which are entitled to consideration in a court-room, are those which are firmly based on demonstrated facts. The expert witness should never attempt to answer a question until he is sure he understands it. This is commonly a very simple matter and only requires the witness to give strict attention to the queries and at the same time carefully consider the answer he makes to the same. Hypothetical questions are frequently very carefully, even adroitly framed—and often with the especial object of puzzling the witness. The lawyer reads the question rapidly ; and then demands that the witness answer it with yes or no. The last procedure I am inclined at all times to regard with suspicion, and therefore ask for a written copy of the query. This copy is then apparently willingly placed in my hands, but frequently I find it is so composed, that while one clause might bear an affirmative answer, the other would require the negative. The witness may then return the question to the lawyer who propounded it, and inform the court that the query cannot be properly answered either negatively or affirma-

tively. The court thus appealed to commonly permits the witness to answer the question in his own language. There should be allowed to the witness sufficient time to consider carefully the question and to formulate properly the answer to the same.

Let the expert witness absolutely banish from his mind while in the witness-chair—all thoughts of hasty or brilliant replies and confine himself strictly to the part which he is playing in the administration of justice. The contemptible attempts sometimes made by lawyers to buldoze, intimidate, or otherwise annoy the witness are very rarely profitable and seldom, if ever justifiable. The natural effects of such procedures are to establish an antagonism between the lawyer and the witness. The witness under these circumstances usually emphasizes more strongly his opinions, while if expert in the matter, receiving the attention of the court, he may be found troublesome in the hands of his persecutor. In order to illustrate this point more clearly, let us suppose that a medical expert is being cross-examined on a medico-legal subject by a lawyer who possesses no knowledge of medicine or surgery, the contest will be quickly settled if waged on a scientific basis, and the victory will belong to the witness and not to his tormentor. The witness, when thus attacked, should redouble his efforts to maintain his serenity lest in an unguarded moment his antagonist should discover some defect in his coat-of-mail. Every question put to the witness should be fully understood before the answer is formulated, and when the reply is put forth, it should be brief and pointed. The witness should avoid, so long as possible, any bandying of personalities with the lawyer, since it is undignified and frequently embarrasses the administration of justice. The expert witness ought never to forget that his sole duty consists in throwing scientific light on the subject under consideration by the court, and thus aiding in procuring justice. In order that he may be able to perform this duty in the most advantageous manner, he ought, in every case where it is possible, to make a special study of the subject matter on which he is likely to be examined before he takes the witness-chair. He ought never to neglect this precaution—even though he may be fully posted,—perfectly confident that he can maintain his opinions against any rival who can be brought against him. He who fails to study constantly, will in

time discover that he is gradually losing some portion of that which he had previously learned.

If he halts in the scientific race he will soon find himself distanced by those who have previously seemed perfectly contented to remain in the rear. Let me here assert that an expert witness should always interpret science honestly—if for no other reason—because it will pay him best in the end. He is frequently called to make expert examinations in order that the case may be compromised, or should all efforts in this direction fail, that he may gain a knowledge of the case which will enable him to serve subsequently his client in court. In all these cases the report should be so full that the claim can be expressed in dollars and cents.

It will therefore be readily seen that those parties who desire expert services wish the report of expert examinations to be entirely reliable. The same is true in regard to expert testimony, the witness having made a careful examination of the patient, entered the court-room, listened attentively to all the testimony, and informed the counsel that his own opinions would be dangerous to the interest of his client's case, will be readily excused and respected for his frankness. Mr. Erichsen says in referring to railway cases in this connection : [1] " It can never be to the interest of a company to fight a notoriously hopeless case as they must incur heavy costs in addition to being mulcted in damages, and if properly advised they will not do so, unless the claim be too exorbitant. They are often led into courts of law by incorrect information as to the real gravity of the case, or are forced into them by the sufferer, irritated by having been dogged by detectives, or the taunts of the company's officer, seeking to obtain exaggerated and vindictive damages."

Another important factor in the causation of litigation are the cormorant lawyers, who, like turkey buzzards, possess a wonderful facility for finding out their prey, and who for a contingent fee are perfectly willing to shame the devil by their own villainy. They seek principally to rob the company, and afterwards they rob their clients. The daily paper has recorded an accident and before its sheets are dry the cormorant lawyers have found their

[1] " Surgical Evidence in Courts of Law." Longmans, Green & Co., London, 1878, page 39, et. seq.

prey in our large cities, especially New York and those in its vicinity.

Mr. Erichsen has correctly stated that, [1] "there are three classes of medical men who appear as witnesses in a court of law. These are, first, the *bona fide* medical attendants of the plaintiff; secondly, the ordinary medical officers of the company; and thirdly, the consulting practitioners—so-called experts. These surgeons are called either by the plaintiff or the company to give opinions on the nature, the extent, and probable duration of the symptoms resulting from the accident that the plaintiff has sustained. The duties of the first two classes of witnesses are usually simple enough. They consist in a great measure in relating the history of the case, the treatment adopted, followed by some general opinions as to its future. The real conflict of evidence, if it occurs, lies between the so-called experts, whose opinions may differ widely as to the essential nature of the actual condition and probable future of the patient." In regard to the differences of opinion the same distinguished author has justly remarked: "Were such differences of opinion only exhibited by medical men when they appear in courts of law, the spectacle would indeed be a melancholy one, and would augur ill for the character and, possibly, even the honesty of our profession. But such conflicts of opinion are unavoidable accompaniments of all that is still vague and uncertain in the science of medicine . . .

In every department of life, in politics or religion, in science or the law itself, conflict of opinions occur to an extent equal at least to that which is met with in medicine. There is much in medicine, and probably more in surgery, which is absolutely determined; but in some departments there still exists, and none unfortunately, none more conspicuously than is that which becomes the subject of investigation in courts of law, namely, the remote consequences of injuries of the nervous system, one of the most intricate, obscure, and difficult problems in surgery, a certain amount of uncertainty both as to the true pathology and the possible duration of such lesions." The true explanation of conflicting opinions must in some cases be looked for in

[1] "Surgical Evidence in Courts of Law." Longmans, Green & Co., London, 1878, page 17.

the relative deficiency of one or the other of the experts. He, who, to-day, is willing to go into a court of law, and in matters of etiology, pathology, and treatment of surgical lesions, base his opinions on the science and practice of surgery, as it was thirty years ago, should be relegated as an antiquated surgeon to a surgical museum. A conflict of opinions between experts cannot be avoided; and consequently, he who enters the field should never neglect to study carefully the various points involved in the investigation. In your study of the case, as well as in giving your testimony endeavor to be systematic. Avoid a rambling desultory course in your examination of a patient and likewise in the study of these cases. Seek out carefully the objective signs, and then group about them the subjective symptoms which are in harmony with, or at least not antagonistic to the former. The citadel thus erected is to be defended by the expert witness; and, consequently it should be built on a strictly scientific foundation. The subjective symptoms, when entirely unsupported by a single objective sign do not afford an adequate foundation for an attack, with any reasonable prospects of recovering damages in the case of a railway injury; but on the contrary in the majority of instances must be construed negatively; and negative evidence cannot justify the jury in finding for the plaintiff. With these brief allusions to the duties, privileges, and the required preparation of medico-legal experts, let us consider briefly whether the present system of procuring expert testimony can be materially improved. Two methods have been suggested heretofore in the place of the practice which is now in vogue, viz., the appointment of the expert witnesses by the State legislatures—while the other suggestion proposes their appointment by an order of the Court in which their services are required. Both of these suggestions are open to the *most serious objections*. In the first place neither of these methods of procedure would procure even mediocrity of talent; since the appointments would always be made for political reasons instead of scientific qualifications.

It is entirely unnecessary to go into further statement on this subject before those who are familiar with political jugglerics. Furthermore the corrupt influences brought to bear on political appointees are commonly much more potent than those

which can be employed in the case of private individuals. The political appointee lives on the crumbs doled out to him by his party, while the professional man commonly depends on industry—scientific attainments—and an honorable character for his business success. The more intelligent his cliental the more urgent will be their demands on the expert witness. However, in all this there is much satisfaction, since we are always fully assured that the demands are based on reason and sound judgment and not merely whimsical in their nature.